

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-cr-77-T-30TBM

SAMI AMIN AL-ARIAN, *et al.*

ORDER

This cause came on for consideration without oral argument upon Defendant Ballut's Objection and Motion for Reconsideration of Magistrate's Order for Discovery of Transcripts (Dkt. #627). The Magistrate's Order for Discovery (Dkt. # 605), entered on August 18, 2004, sets forth periodic deadlines for the Government's production of English language translations of communications the Government intends to offer into evidence during its case-in-chief. The Magistrate's Order for Discovery directs the Government to provide such translations in installments of at least one-hundred (100) transcripts by October 1, 2004, November 1, 2004, and December 1, 2004. It also sets forth a December 31, 2004, deadline for the Defendants' production of any alternative translations they wish to offer in rebuttal to the Government's translations, as well as any other English-language translations the Defendants may seek to introduce in their case-in-chief. The case is scheduled for trial on January 5, 2005.

Defendant Ballut proposes several amendments to the Magistrate's Order for Discovery. First, Defendant Ballut asks this Court to accelerate the Government's

production of transcripts meeting certain types of characteristics and to require the Government to produce transcripts in the order it anticipates introducing them into evidence at trial. Because this Court finds that the amount of time permitted the Defendants to produce their own English translations of the communications is sufficient, and that imposing such restrictions on the Government could prevent the Government from meeting all of the discovery deadlines set forth in the Magistrate's Order for Discovery, Defendant Ballut's first request should be DENIED.

Second, Defendant Ballut asks this Court to require the Government to provide an index to the translated communications, identifying the date and time of the communication, the number of the Overt Act describing the communication (if applicable), and the identity of the speakers. This Court finds that such request should be considered by the Magistrate Judge, who is handling discovery matters related to this case. Therefore, Defendant Ballut's second request should be DENIED WITHOUT PREJUDICE.

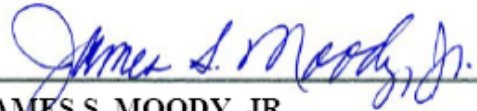
Third, Defendant Ballut requests the Order for Discovery to be amended so that the Defendants are not precluded from introducing into evidence other transcripts that are relevant to any material issue in the case and are necessary to the presentation of the defense between the commencement of the trial and the commencement of the Defendants' case in chief. The Government already provided the Defendants in March 2004 with summaries of all 800 intercepts it considers "pertinent" to the case, and the approximately 200 to 300 intercepts that the Government intends to use at trial will be produced to the Defendants in installments of 100 beginning on or before October 1, 2004, and ending on December 1,

2004. This Court believes that the December 31, 2004, deadline offers the Defendants sufficient time to present their own English-language translations of communications that they will seek to introduce at trial. Additionally, because the Order for Discovery directs the Government to transfer all of the English-language translations of communications it plans to use in its case-in-chief to the Defendants, the Court does not perceive any purpose to be served by granting Defendant's request. To the extent the Defendants anticipate being surprised by the Government at trial with English-language translations of communications that were not disclosed pre-trial, the Court considers such surprises highly unlikely in light of the discovery deadlines imposed on the Government in the Order for Discovery. Notwithstanding this unlikelihood, the Defendants will be able to seek relief from the Order for Discovery at trial if they can prove the Government has, in fact, introduced English-language translations that were not disclosed pre-trial. Accordingly, Defendant Ballut's third request should be DENIED.

Finally, Defendant Ballut asks this Court for a continuance "in the event that the Government objects to the proposed additional discovery of defense transcripts after the commencement of trial." Because this Court has foreclosed the Defendants' right to introduce additional English-language transcripts after December 31, 2004, except under the unlikely circumstances identified above, this Court finds that Defendant Ballut's request for a continuance should be DENIED.

It is therefore ORDERED AND ADJUDGED that Defendant Ballut's Objection and Motion for Reconsideration of Magistrate's Order for Discovery of Transcripts (Dkt. #627) is **DENIED**.

DONE and **ORDERED** in Tampa, Florida on September 23, 2004.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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